

7 DISTRICT COURT OF GUAM
8 TERRITORY OF GUAM
9

10 ALAN SADHWANI, LAJU SADWANI,
11 and K. SADHWANI'S INC., a Guam
corporation,

12 Plaintiffs,

13 vs.

14 HONGKONG AND SHANGAI
15 BANKING CORPORATION, LTD., a
Foreign corporation,
16 JOHN DOE I through JOHN DOE X,

17 Defendants.

CIVIL CASE NO. 03-00036

MEMORANDUM AND ORDER

18 Plaintiffs have filed an ex parte motion (Docket No. 299) for an extension of time to disclose
19 their expert witness to the Defendant. Defendant HSBC has responded and has objected to the said
20 extension (Docket No. 329).

21 Plaintiffs assert that under Federal Rules of Civil Procedure 26(a)(2)(c), expert witness
22 disclosure shall be made at least ninety (90) days prior to trial. Trial is set in this matter for January
23 25, 2005. The expert witness disclosure would therefore be October 27, 2004. Discovery deadline
24 however, is November 17, 2004. Plaintiffs further assert that they will continue taking depositions
25 between October 27 through the November 17, 2004 discovery deadline. It is therefore "axiomatic
26 that the expert witnesses should have access to all of the depositions and documents produced in this
27 case prior to providing their expert witness reports". Plaintiffs further contend that an extension will
28 benefit both Plaintiffs and Defendant and furthermore that Defendant will not suffer any prejudice as

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1 a result of an extension. Plaintiff thus request an extension from October 27, 2004 to November 30,
2 2004 to serve and disclose their expert witnesses.

3 Defendant objects to the extension, claiming that Plaintiffs' deadline for seeking an extension
4 has already passed. On July 19, 2004, Defendant served upon Plaintiffs a "Disclosure of Expert
5 Testimony and report of Thomas Tarter". Plaintiffs did not provide the disclosure of any expert
6 testimony and report within thirty (30) days thereafter as required by Rule 26(a)(2). Thus Plaintiffs
7 are foreclosed from any expert testimony to rebut the testimony of their expert witness. Defendant
8 also argues that granting the motion would be unfair and prejudicial to it.

9 Plaintiffs point out in their reply that on July 30, the parties stipulated in court to move the
10 trial date to January 25, 2005. According to Plaintiffs, based upon this change in trial date, they then
11 were required to disclose their expert witnesses no later than ninety days before trial or October 27,
12 2004. Plaintiffs cite to *Dixon v. Certaineed Corp.*, 168 F.R.D. 51 (D. Kan. 1996), which held that
13 the provision of Rule 26(a)(2) which required the disclosure of rebuttal expert witnesses within thirty
14 days of the opposing party's designation was subordinate to the requirement that designation be at
15 least ninety days prior to trial.

16 Plaintiffs also argue that the prejudice which Defendant alludes to is of its own making.
17 Plaintiffs contend that Defendant HSBC has "refused to produce documents and witnesses for their
18 deposition that are necessary for Plaintiffs' expert witness to give an adequate and complete expert
19 witness report". Plaintiffs also point out that they have been attempting to take the deposition of
20 Christopher Page, Chief Credit Officer, and Magnus Montan, Associate Director since March 1,
21 2004. These attempts have met various forms resistance from HSBC. Plaintiffs had to obtain two
22 Letter of Request to take a deposition in Hongkong of the aforementioned individuals. The
23 depositions which were supposed to take place in latter July did not proceed as scheduled because
24 HSBC filed motions to vacate or set aside the deposition orders in the Hongkong court. The
25 Hongkong hearing on the said motions is set for November 2, fifteen days before the discovery
26 deadline. Plaintiff alternatively sought to take the deposition of the same individuals in Guam on
27

1 October 12 and 14. HSBC moved for a protective order - to prevent the taking of the said
2 depositions in Guam. This Court denied the protective order. The said individuals did not appear
3 at the appointed times in Guam for the taking of their deposition.

4 An extension of the expert witness disclosure deadline rests within the sound discretion of the
5 Court. The Plaintiffs are currently faced with an October 27 deadline to disclose their expert witness
6 and report. A request to extend the disclosure deadline until such time as the expert shall have
7 reviewed all depositions and discovery hereto had by the Plaintiffs, especially the depositions of
8 HSBC's employees, Page and Montan, critical witnesses from Plaintiff's view point, is a sound and
9 reasonable request. Page and Montan have yet to be deposed. They have not been produced at the
10 depositions scheduled in October in Guam and there remains the question whether they eventually
11 will be deposed by Plaintiffs. Furthermore, assuming their depositions move forward, the depositions
12 may very well be close to the discovery deadline, which makes granting of Plaintiff's ex parte motion
13 more sound and reasonable. Had the depositions of these individuals been taken as originally
14 scheduled in mid July, the Court may have found Plaintiffs' motion to extend wanting. That is not
15 the case, however.

16 The Court thus finds that Plaintiff's request to extend the expert witness disclosure deadline
17 is reasonable and merited. Furthermore, Plaintiffs are not precluded from seeking such an extension
18 by their failure to file a response to the Defendant's disclosure of their expert testimony and report
19 which Plaintiffs received on July 19, 2004. Plaintiffs have not missed the expert testimony disclosure
20 deadline¹. The primary reason for which Plaintiffs seek the extension has been the delays caused by
21 HSBC in resisting discovery attempts made by the Plaintiffs. The attempts to depose HSBC's
22 corporate officers, Page and Montan serve as a clear example. The delays underscore the need for
23 the experts to have access to all discovery documents and deposition transcripts prior to the
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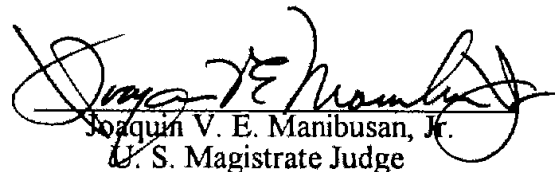
25 ¹The cases the Defendant cites to in opposition to the motion were instances in which a
26 party had missed the disclosure deadline or had named an expert in a pleading in opposition to a
27 summary judgment motion even though that expert was not one of those named in an earlier
disclosure.

1 submission of their report.

2 In deciding upon a date within which to extend the disclosure deadline, the Court is cognizant
3 that November 30, the requested extension date, is fifty-six (56) days before trial. It is also one day
4 before the deadline for filing dispositive motions. The Court finds that extending the expert witness
5 disclosure deadline to a date sixty days before trial would be more appropriate. Thus the Court will
6 extend the said deadline to November 26, 2004. Furthermore, the Court finds that the Defendant will
7 not suffer any prejudice if the Court extends the expert witness disclosure deadline to November 26,
8 2004. With the many resources available to Defendant, there is sufficient time after November 26
9 to take the deposition of Plaintiffs' expert(s) and to file rebuttal reports. If there be any prejudice,
10 however, it is prejudice caused by HSBC in resisting discovery attempts made by the Plaintiffs.

11 **IT IS SO ORDERED.**

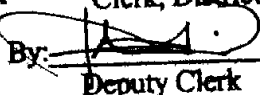
12 Dated: October 15, 2004

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14 
15 Joaquin V. E. Manibusan, Jr.
U. S. Magistrate Judge

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18 Notice is hereby given that this document was
19 entered on the docket on 10/15/04.
20 No separate notice of entry on the docket will
be issued by this Court.

21 Mary L. M. Moran

Clerk, District Court of Guam

22 By:  10/15/04
23 Deputy Clerk Date